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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931 and 933

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1277

RIN 2590-AA71

Federal Home Loan Bank Capital Stock and Capital Plans

AGENCY: Federal Housing Finance Board, Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The proposed rule would transfer existing parts 931 and 933 of the Federal Housing Finance Board (Finance Board) regulations, which address requirements for Federal Home Loan Bank (Bank) capital stock and capital plans, to new Part 1277 of the Federal Housing Finance Agency (FHFA) regulations. The proposed rule would not make any substantive changes to these requirements, but would delete certain provisions that applied only to the one-time conversion of Bank stock to the new capital structure required by the Gramm-Leach-Bliley Act (GLB Act). It would also make certain clarifying changes so that the rules would more precisely reflect long-standing practices and requirements with regard to transactions in Bank stock. Most significantly, the proposed rule would add appropriate references to “former members” to clarify when former Bank members can be required to maintain investment in Bank capital stock after withdrawal from the Bank.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590-AA71 by any of the following methods:

- Agency Website: www.fhfa.gov/open-for-comment-or-input.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@FHFA.gov to ensure timely receipt by the agency. Please include “RIN 2590-AA71” in the subject line of the message.
- Hand Delivery/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA71 , Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA71, Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, Julie.Paller@FHFA.gov, 202-649-3201(this is not a toll-free number), Division of Federal Home Loan Bank Regulation; or Thomas E. Joseph, Associate General

Counsel, Thomas.Joseph@FHFA.gov, 202-649-3076 (this is not a toll-free number), Office of General Counsel (OGC), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street, SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Comments

Section 553 of the Administrative Procedure Act generally requires an agency to publish a proposed rule in the Federal Register and provide the public an opportunity to comment on it.¹ Such notice and public comment, however, may be dispensed with if they are unnecessary.² In this case, FHFA believes that notice and comment would be unnecessary because the proposed rule would transfer existing regulation without substantive change, deleting provisions that clearly have no continuing applicability. Nonetheless, FHFA desires the benefit of public comment and has therefore decided to publish this proposed rule with a 60-day comment period and invites comments on all aspects of the proposal. After considering the comments, FHFA will develop a final regulation.

Copies of all comments received by the deadline will be posted without change on the FHFA website at <http://www.fhfa.gov>, and will include any personal information you provide, such as your name, address, email address and telephone number. Copies of all comments timely received will be available for public inspection and copying on government-business days between the hours of 10 a.m. and 3 p.m. at the Federal

¹ 5 U.S.C. 553(b).

² Id. at 553(b)(B).

Housing Finance Agency, Constitution Center, 400 7th Street, SW., Washington, DC 20024. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649-3804.

B. Creation of the Federal Housing Finance Agency

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA)³ created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development.⁴ Under the legislation, the Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA.⁵ While FHFA has amended and/or re-adopted and transferred most of the former Finance Board regulations, certain Finance Board regulations, including those which address Bank capital, have not yet been transferred by FHFA, although they continue to apply to the Banks.

C. Bank Capital Stock and Capital Plans

³ Pub. Law No. 110-289, 122 Stat. 2654.

⁴ See 12 U.S.C. 4511.

⁵ See 12 U.S.C. 4511, note.

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).⁶ The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank.⁷ Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions.⁸

In 1999, the GLB Act⁹ amended the Bank Act to replace the capital structure of the Bank Systems. Under the GLB Act, the Banks became subject to risk-based and leverage capital requirements similar to those applicable to depository institutions and other housing GSEs. The GLB Act also directed the Finance Board to adopt regulations prescribing uniform capital standards applicable to each Bank. It also required the Banks to replace their existing capital stock with new classes of capital stock that would have different terms from the stock then-held by Bank System members. Specifically, the GLB Act authorized the Banks to issue new Class A stock, which the GLB Act defined as redeemable six months after filing of a notice by a member, and Class B stock, defined as redeemable five years after filing of a notice by a member. The GLB Act allowed Banks to issue Class A and Class B stock in any combination and to establish terms and

⁶ See 12 U.S.C. 1423 and 1432(a). The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

⁷ See 12 U.S.C. 1426(a)(4), 1430(a), and 1430b.

⁸ See 12 U.S.C. 1427.

⁹ Pub. Law No. 106-102, 113 Stat. 1338 (Nov. 12, 1999).

preferences for each class or subclass of stock issued, consistent with Finance Board regulations and the Bank Act.¹⁰

As part of the process for converting the “old” capital stock to the new GLB Act Class A and Class B stock, the GLB Act required each Bank to adopt and maintain a capital plan that established the rights, terms and preferences of each class or subclass of capital stock that it would issue.¹¹ The GLB Act also required that each Bank’s capital plan establish the minimum investment in capital stock required for its members to maintain membership and to conduct business with the Bank. Such minimum investment requirements needed to be sufficient for the Bank to meet its new minimum regulatory capital requirements. The GLB Act provided each Bank’s board of directors the discretion to develop and implement a capital plan that it determined was best suited for the conditions and operations of the Bank and the interests of the Bank’s members.¹² It also required Finance Board approval of each Bank’s capital plan prior to it taking effect.

Under the Finance Board regulations, each Bank had discretion as to when it would convert to the new capital structure. The Finance Board regulations also addressed in detail the process for the one-time conversion to the new capital structure, including requirements for disclosure to be given to members prior to the conversion. Since the Finance Board originally adopted these regulations in 2001, all Banks have converted to the GLB Act capital structure. The original Finance Board regulations have not yet been

¹⁰ See 12 U.S.C. 1426, and 12 CFR parts 931 and 933.

¹¹ Id.

¹² See 12 U.S.C. 1426(b)(1).

amended, however, to remove provisions that applied only to the initial conversion process.¹³

D. Considerations of Differences between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires the Director of FHFA (Director) to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability.¹⁴ This requirement does not apply to regulations of the Finance Board that the Director reissues. The changes proposed in this rulemaking are clarifying and conforming in nature and apply exclusively to the Banks. Apart from those changes, the substance of the proposed rule is the same as that of the existing Finance Board regulations. Accordingly, the proposed rule does not trigger this statutory requirement. Nonetheless, FHFA, in preparing this proposed rule, considered the differences between the Banks and the Enterprises as they relate to the above factors. FHFA requests comments from the public about whether these differences should result in any revisions to the proposed rule.

II. Analysis of the Proposed Rule

The Proposed Rule

The proposed rule would transfer the Finance Board Bank capital stock regulations from 12 CFR part 931 and the Bank capital plan regulations from 12 CFR

¹³ See Final Rule: Capital Requirements for Federal Home Loan Banks, 66 FR 8262 (Jan. 30, 2001); and Final Rule: Capital Requirements for Federal Home Loan Banks, 66 FR 54097 (Oct. 26, 2001)(amending capital requirements).

¹⁴ See 12 U.S.C. 4513 (as amended by section 1201 Pub. L. 110-289, 122 Stat. 2782-83).

part 933 to subparts C and D of new part 1277 of FHFA regulations, respectively.

Relevant definitions for parts 931 and 933 would be transferred to subpart A of new part 1277.¹⁵ As part of this transfer, FHFA also proposes to make certain non-substantive, clarifying and conforming changes to these provisions and to remove requirements which applied only to the Banks' initial conversion to the GLB Act capital structure.

Definitions. FHFA proposes to replace definitions for “regulatory risk-based capital requirement” and “regulatory total capital requirement” with a new single definition for “regulatory capital requirements.” The proposed rule would define this new term as the minimum amounts of permanent and total capital that a Bank is required to maintain under section 6(a) of the Bank Act (12 U.S.C. 1426(a)) and any related regulations, as such requirements may be modified by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action. FHFA would replace various references to “minimum capital requirement” or “capital requirement” with a reference to “regulatory capital requirements” in the text of the transferred regulations.

FHFA also proposes to define the term “former member” as an institution whose membership in a Bank has been terminated, but which continues to hold stock in the Bank as required by the Bank’s capital plan, and includes any successor to such institution that continues to hold the Bank’s stock that had been issued to the acquired institution. As discussed more fully below, FHFA proposes to add various references to “former member” in the regulatory text to clarify that under the Bank Act and existing

¹⁵ As part of a separate and future rulemaking, FHFA intends to amend and transfer the existing Bank capital regulations from part 932 of the Finance Board regulations to subpart B of new part 1277.

regulations, such institutions can be required to hold Bank stock in certain situations after termination of their Bank membership.

Capital Stock Provisions. FHFA proposes to transfer current 12 CFR part 931 to new subpart C of part 1277. Most of these provisions will be transferred without change, beyond necessary conforming changes. FHFA, however, proposes to delete current § 931.9 which addresses various transition requirements related to the Banks' conversion to the GLB Act capital structure. Given that all Banks have successfully completed this process, § 931.9 has no future applicability and can be removed.

As already noted, FHFA also proposes to clarify in various provisions that former members can be required to hold Bank stock, or otherwise engage in stock transactions, after withdrawal. For example, an institution is not required upon withdrawal to pay off all outstanding advances or other activity, but instead, a Bank can allow such institution to liquidate such indebtedness in an orderly manner. See 12 U.S.C. 1426(d)(3). Under current rules, such institution must retain sufficient stock to fulfill any stock purchase requirement established by the Bank's capital plan related to the outstanding activity. See 12 CFR § 1263.29(b). Some, but not all, Banks' capital plans also may require former members to buy additional Bank stock if a Bank increases the relevant activity stock purchase requirement during the orderly liquidation period.¹⁶

In other situations, a Bank may not be required to purchase a former member's stock upon withdrawal because the relevant redemption periods have not been completed

¹⁶ FHFA does not intend any of its proposed changes in this rulemaking to imply that a Bank must require former members to buy stock as a result of an increase in a relevant stock purchase requirement while activity remains outstanding. Instead, FHFA seeks to clarify that such a requirement is possible as long as a Bank specifies such a requirement in its approved capital plan.

on such date.¹⁷ A Bank also may be prohibited by regulation or FHFA order from redeeming a former member's stock upon its withdrawal, so that the institution must continue to hold the stock beyond the date that membership terminates.¹⁸

To account for such situations, FHFA proposes to add relevant references to former members in a number of provisions, including proposed §§ 1277.21, 1277.22, 1277.25, 1277.26, and 1277.28(d)(4). Because FHFA generally has continued the Finance Board's approach and interpreted references to "member" in these regulations to include a former member, when appropriate, FHFA views these changes as clarifying in nature.¹⁹

FHFA also proposes to add clarifying language to § 1277.23. The new language provides that any provision in a Bank's capital plan related to stockholder rights in a liquidation, merger or consolidation of the Bank cannot limit FHFA's authority under the Bank Act or the Safety and Soundness Act to issue a regulation or order or to take any other action that may affect or otherwise alter the rights or privileges of stock holders in these situations. FHFA believes that the proposed language is consistent to wording that already has been incorporated into each Bank's approved capital plan and therefore will not alter the scope of current approved capital plan provisions that address the Bank's liquidation, merger or consolidation.

¹⁷ A Bank is only required to redeem a member's, or former member's, stock upon expiration of the relevant redemption period, and then only if the stock is not needed to meet any applicable stock purchase requirement or Bank regulatory capital requirement. See 12 CFR 931.7 (proposed § 1277.26).

¹⁸ For example, a Bank cannot redeem any stock if it would fail to meet any regulatory capital requirement after the redemption. See 12 U.S.C. 1426(f) and 12 CFR 931.7(c) (proposed § 1277.26(c)).

¹⁹ In this respect, both the Finance Board and FHFA have approved Bank capital plans that apply stock transaction or stock holding provisions specifically to former members, even though current, relevant regulations refer only to members.

Capital Plan Requirements. FHFA proposes to transfer relevant provisions in current part 933 to subpart D of new part 1277. As part of this process, it proposes to remove those provisions that relate only to the Banks' initial conversion to the GLB Act capital structure, given that the provisions have no continuing applicability. The provisions FHFA proposes to delete include, provisions in current § 933.1 that relate only to the initial submission of capital plans by the Banks for approval, and §§ 933.2(d), (e) and (h), 933.3, 933.4, and 933.5. Other provisions in part 933 will be carried over to subpart D of part 1277 with necessary conforming changes.

FHFA also proposes not to reissue duplicative provisions related to the calculation and application of a member's, or former member's, minimum investment requirements. These requirements are now contained in both § 931.3 of the rules, which sets forth requirements for the minimum stock investment, and § 933.2(a), which sets forth the requirements for a Bank's capital plan related to the minimum investment. Instead, the proposed rule would provide that a Bank's capital plan should specify the manner for calculating the minimum investment and require a member, and if applicable a former member, to purchase and maintain such investment in accordance with proposed § 1277.22. The change would incorporate by reference the requirements governing the calculation and maintenance of the minimum investment set forth in proposed § 1277.22 and, thus, would not alter the current capital plan requirements in any substantive manner.

FHFA also proposes to add to subpart D new § 1277.29 to address amendments to approved Bank capital plans. The current part 933 rules do not specifically address the process for submitting capital plan amendments for FHFA approval, although the Bank

Act allows Banks to amend their capital plans with such approval.²⁰ FHFA proposes to incorporate in this new section requirements that reflect the process that long has been applied to the submission and approval of Bank capital plan amendments, including applicable Finance Board guidance, first provided to the Banks in 2003, on information that a Bank should submit with any approval request. FHFA also proposes to carry over in proposed § 1277.29(c), current language from § 933.1(c) that would allow the Director to approve an amendment to a capital plan subject to specific conditions.

III. Paperwork Reduction Act

The information collection, entitled “Capital Requirements for the Federal Home Loan Banks,” contained in the current 12 CFR parts 931 and 933 of the regulations that would be transferred to 12 CFR part 1277 by this proposed rule, has been assigned control number 2590-0002 by the Office of Management and Budget (OMB). The proposed rule if adopted as a final rule would not substantively or materially modify the current, approved information collection.

IV. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this proposed rule, if adopted as a final rule, would not have significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Parts 931 and 933

²⁰ See 12 U.S.C. 1426(b)(2).

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

12 CFR Part 1277

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the Preamble and under the authority of 12 U.S.C. 1426, 1436, 1440, 1443, 1446, 4511, 4513, 4526, FHFA proposes to amend subchapter E of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

Subchapter E—Federal Home Loan Bank Risk Management and Capital Standards

PART 931—[REMOVED]

1. Remove part 931.

PART 933—[REMOVED]

2. Remove part 933.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter D—Federal Home Loan Banks

3. Add part 1277 to subchapter D to read as follows:

**PART 1277—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS,
CAPITAL STOCK AND CAPITAL PLANS**

Subpart A – Definitions

Sec
1277.1 Definitions.

Subpart B – [Reserved]

Subpart C – Bank Capital Stock

- 1277.20 Classes of capital stock.
- 1277.21 Issuance of capital stock.
- 1277.22 Minimum investment in capital stock.
- 1277.23 Dividends.
- 1277.24 Liquidation, merger, or consolidation.
- 1277.25 Transfer of capital stock.
- 1277.26 Redemption and repurchase of capital stock.
- 1277.27 Other restrictions on the repurchase or redemption of Bank stock.

Subpart D – Bank Capital Plans

- 1277.28 Bank capital plans.
- 1277.29 Amendments to a Bank's capital plan.

Authority: 12 U.S.C. 1426, 1436(a), 1440, 1443, 1446, 4511, 4513, 4514, 4526, 4612.

Subpart A – Definitions

§ 1277.1 Definitions.

As used in this part:

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 1277.20(a) of this part.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 1277.20(b) of this part.

Former member means an institution for which the membership in a Bank has been terminated but which continues to hold stock in the Bank as required by the Bank's capital plan, and includes any successor to such institution that continues to hold the stock in the Bank that had been issued to the acquired institution.

General allowance for losses means an allowance established by the Bank in accordance with GAAP for losses, but which does not include any amounts held against

specific assets of the Bank.

Minimum investment means the minimum amount of stock that an institution is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with § 1277.22 of this part.

Permanent capital means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank's Class B stock.

Redeem or Redemption means the acquisition by a Bank of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

Regulatory capital requirements means the minimum amounts of permanent and total capital that a Bank is required to maintain under section 6(a) of the Bank Act (12 U.S.C. 1426(a)) and any related regulations, as such requirements may be modified by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action.

Repurchase means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year statutory redemption period for the stock.

Total capital of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank's capital plan that the Director has determined to be available to absorb losses incurred by such Bank.

Subpart B – [Reserved]

Subpart C – Bank Capital Stock

§ 1277.20 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value; and

(3) Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value;

(3) Be redeemable in cash only on five-years written notice to the Bank; and

(4) Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank; and

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank's capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

§ 1277.21 Issuance of capital stock.

A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by § 1277.20, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members, or to former members to the extent those institutions are required to maintain a minimum stock investment for existing

activities under the capital plan, and only in book-entry form. The Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank's capital plan.

§ 1277.22 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank's capital plan and shall be sufficient to ensure that the Bank remains in compliance with its regulatory capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and shall require each member and former member to maintain its minimum investment for as long as the institution engages in any activity with the Bank for which the capital plan requires the institution to maintain capital stock.

(b) A Bank may establish the minimum investment as a percentage of the total assets of an institution, as a percentage of the advances outstanding to that institution, as a percentage of any other business activity conducted with the institution, on any other basis that is approved by the Director, or any combination thereof.

(c) A Bank may require that the minimum investment requirement be satisfied through the purchase of either Class A or Class B stock, or through the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a

lower minimum investment to the extent the requirement is met through investment in Class B stock than if the requirement is met through investment in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its regulatory capital requirements.

(d) Each member, or if applicable, former member, of a Bank shall at all times maintain an investment in the capital stock of the Bank in an amount that is sufficient to satisfy the minimum investment required under the Bank's capital plan.

§ 1277.23 Dividends.

(a) In general. A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided the Bank with a notice of intent to withdraw from membership, or a former member shall be entitled to receive any dividends that a Bank declares on its capital stock while such institution owns the stock.

(b) Limitation on payment of dividends. In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its regulatory capital requirements, nor shall a Bank that is not in compliance with any of its regulatory capital requirements declare or pay any dividend on its capital stock.

§ 1277.24 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that

the Bank is liquidated, or is merged or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank, provided, however, that nothing in the capital plan shall be construed to limit any rights or authority granted FHFA under the Bank Act or the Safety and Soundness Act to issue any regulation or order or to take any other action that may affect or otherwise alter the rights or privileges of stock holders in a liquidation, merger or consolidation of a Bank.

§ 1277.25 Transfer of capital stock.

A Bank in its capital plan may allow a member or former member to transfer any excess stock to a member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank. The Bank may, in its capital plan, require that the transfer be approved by the Bank before such transfer can occur.

§ 1277.26 Redemption and repurchase of capital stock.

(a) Redemption. (1) A member or former member may have its stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. A member or former member shall provide six-months written notice for Class A stock and five-years written notice for Class B stock. The notice shall indicate the number of shares of Bank stock that are to be redeemed. No more than one notice of redemption may be outstanding at one time for the same shares of Bank stock. At the expiration of the applicable notice period, the Bank shall pay to the member or other institution holding

the stock the stated par value of that stock in cash.

(2) A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) with respect to any cancellation of a pending notice of redemption. A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request.

(3) A Bank shall not be obligated to redeem its capital stock other than in accordance with this paragraph.

(b) Repurchase. A Bank, in its discretion and without regard to the applicable redemption periods, may repurchase excess stock in accordance with the capital plan of that Bank. A Bank undertaking such a stock repurchase at its own initiative shall provide reasonable notice prior to repurchasing any excess stock, with the period of such notice to be specified in the Bank's capital plan, and shall pay the stated par value of that stock in cash. A member's submission of a notice of intent to withdraw from membership, or its termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section.

(c) Limitation. In no event may a Bank redeem or repurchase any stock if, following the redemption or repurchase, the Bank would fail to meet its regulatory capital requirements, or if the member or former member would fail to maintain its minimum investment in the stock of the Bank, as required by § 1277.22 of this part.

§ 1277.27 Other restrictions on the repurchase or redemption of Bank stock.

(a) Capital impairment. A Bank may not redeem or repurchase any capital stock without the prior written approval of the Director if the Director or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. This prohibition shall apply even if a Bank is currently in compliance with its regulatory capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Director determines that such charges are not expected to continue.

(b) Bank discretion to suspend redemption. A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its regulatory capital requirements, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its regulatory capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Director in writing within two business days of the date of the decision to suspend the redemption of stock, providing the reasons for the suspension and the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Director may require the Bank to re-institute the

redemption of stock. A Bank shall not repurchase any stock without the written permission of the Director during any period in which the Bank has suspended redemption of stock under this paragraph.

Subpart D – Bank Capital Plans

§ 1277.28 Bank capital plans.

Each Bank shall have in place a capital plan approved by the Bank's board of directors and the Director. The capital plan shall include, at a minimum, provisions addressing the following matters:

(a) Minimum investment. (1) The capital plan shall require each member, and if applicable each former member, to purchase and maintain a minimum investment in the capital stock of the Bank and prescribe the manner for calculating the minimum investment, in accordance with § 1277.22 of this part.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, and to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires that the minimum investment be satisfied through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that outstanding stock remains sufficient for the Bank to comply with its regulatory capital requirements. The plan shall require each member or, where required by the plan, former member, to

comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a reasonable time to do so and may allow a reduction in outstanding business with the Bank as an alternative to purchasing additional stock.

(b) Classes of capital stock. The capital plan shall specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to § 1261.6 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) Dividends. The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any regulatory capital requirement or if after paying the dividend it would not be in compliance with any regulatory capital requirement.

(d) Stock transactions. The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:

(1) Shall provide that the Bank may not issue stock other than in accordance with § 1277.21 of this part;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank, and by former members to the extent necessary to meet requirements set forth in a capital plan;

(3) Shall specify whether the stock of the Bank may be transferred, as allowed under § 1277.25 of this part, and, if such transfer is allowed, shall specify the procedures to effect such transfer, and provide that the transfer shall be undertaken only in accordance with § 1277.25;

(4) Shall specify that the stock of the Bank may be traded only among the Bank and its members, and former members;

(5) May provide for a minimum investment based on investment in Class B stock that is lower than a minimum investment based on investment in Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed upon cancellation of a request to redeem Bank stock or upon cancellation of a request to withdraw from membership; and

(7) Shall specify the period of notice that the Bank will provide before the Bank, on its own initiative, determines to repurchase any excess Bank stock.

(e) Termination of membership. The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against such institutions, including claims resulting from prepayment of

advances prior to their stated maturity.

§ 1277.29 Amendments to a Bank's capital plan.

(a) In general. A Bank's board of directors shall approve any amendments to the Bank's capital plan and submit such amendment to the Director for approval. No such amendment may take effect until it has been approved by the Director.

(b) Submission of amendments for approval. Any request for approval of capital plan amendments should be submitted to the Deputy Director for the Division of Federal Home Loan Bank Regulation and should include the following:

(1) The name of the Bank making the request and the name, title, and contact information of the official filing the request;

(2) The name, title and contact information of the staff member(s) whom FHFA may contact for additional information;

(3) A certification by an executive officer of the Bank with knowledge of the facts that the representations made in the request are accurate and complete. The following form of certification may be used: "I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title]";

(4) A written, narrative description of the proposed amendments to the Bank's capital plan and a discussion of the Bank's reasons for the proposed changes;

(5) The amended capital plan as approved by the Bank's board of directors;

(6) A version of the Bank's capital plan showing all proposed changes to its previously approved capital plan;

(7) Resolutions of the Bank's board of directors:

(i) Approving the proposed capital plan amendments; and

(ii) Authorizing the filing of the application for approval of the amendments and concurring in substance with the supporting documentation provided;

(8) An opinion of counsel demonstrating that the proposed amendments comply with the Bank Act, FHFA regulations and any other applicable law or regulation. If the amendments would be identical in substance to provisions approved for other Banks' capital plans, a Bank's legal analysis may reference the other capital plans that contain the provisions in question;

(9) An analysis of the effect of the proposed amendments, if any, on the Bank's capital levels and the Bank's ability to meet its regulatory capital requirements;

(10) Pro forma financial statements from the end of the quarter immediately prior to the date of submission of the request for approval through at least the end of the next two years, showing the impact of the proposed changes, if any, on capital levels; and

(11) A discussion of and an explanation for changes to the Bank's strategic plan, if any, which may be related to the capital plan amendments.

(c) FHFA consideration of the amendment. The Director may approve any amendment to a Bank's capital plan as submitted or may condition approval on the Bank's compliance with certain stated conditions.

Dated: September 30, 2104.

Melvin L. Watt,
Director, Federal Housing Finance Agency.

